

several obligation to promptly remedy all interference resulting from block downconverter overload at any ITFS receive site registered prior to the submission of the application or notification for the signal booster station or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the signal booster station licensee to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter interference at a MDS or ITFS receive site, the licensees of the contributing signal booster stations shall cooperate in good faith to remedy promptly the interference.

[63 FR 65125, Nov. 25, 1998]

EFFECTIVE DATE NOTE: At 63 FR 65125, Nov. 25, 1998, § 74.985 was revised. Paragraphs (a), (b) and (d) through (f) contain information collection and recordkeeping requirements and will not be effective until approved by the Office of Management and Budget.

§ 74.986 Involuntary ITFS station modifications.

(a) Parties specified in paragraph (b) of this section may, subject to Commission approval, involuntarily modify the facilities of an existing ITFS licensee in the following situations:

(1) If the initiating party is prevented from invoking the 0 dB interference protection standard (see § 21.902(f)(2) of this chapter and § 74.903(a)(2) of this part) for projecting its impact on an existing ITFS licensee because of that licensee's pre-May 26, 1983, facilities, the applicant, permittee or licensee may modify the facilities of the pre-existing ITFS station with equipment adequate to perform at that level of interference;

(2) If the initiating party is prevented from operating at a higher transmitter output power or EIRP because such power level will cause harmful interference to an ITFS station and modifying the ITFS station will avoid such harmful interference;

(3) If the initiating party is prevented from installing a signal booster because such installation will cause harmful interference to an ITFS station and modifying the ITFS station will avoid harmful interference;

(4) If an ITFS licensee uses equipment incapable of meeting the aural power standard specified in § 74.935(d) and that equipment becomes a source of harmful adjacent-channel interference, and other equipment would avoid such harmful interference.

(5) If an ITFS licensee uses equipment incapable of meeting the transmitter tolerance standard specified in § 74.961 of this part and that equipment becomes a source of harmful co-channel interference, and other equipment would avoid the harmful interference;

(6) If an ITFS licensee uses equipment incapable of meeting the out-of-band emissions standard specified in § 74.936 of this part and that equipment becomes a source of harmful adjacent-channel interference, and other equipment would avoid the harmful interference; and

(7) If harmful adjacent-channel interference may be avoided by colocation of an ITFS facility with its own facilities.

(8) There are no response station hubs licensed to or previously-proposed by any of the parties specified in paragraph (b) of this section, in the same system as the existing ITFS licensee of whose facilities involuntary modification is sought; however, in no event shall the Commission approve an involuntary retuning of an existing ITFS licensee's station to other frequencies, except as provided in § 74.902(i) through (k).

(b) Involuntary modification may be sought by an MDS, MMDS or ITFS licensee, conditional licensee, permittee or applicant. Opposed applicants do not have authority to seek involuntary colocation. An opposed application is one that faces a competing application(s) or petition(s) to deny. Applicants will

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be required to confirm their unopposed status after the period for competing applications and petitions to deny has passed. If an initiating application is opposed, the companion ITFS modification application will be returned. It may be refiled when the initial application is again unopposed.

(c) The application for involuntary modification must be prepared, signed and filed by the initiating party. The applicant must submit FCC Form 330 but need not fill out section II (Legal Qualifications), and the application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. A copy of the application must be served on the affected ITFS party on or before the day of filing. The ITFS party to be modified will have a 60-day period in which to oppose the modification application; the opposition should state objections to the modification with specificity, including engineering and other challenges. If the modification includes colocation, the opponent should address the desirability of the present site compared to the proposed new site.

(d) The party initiating the modification will be responsible for all costs connected with the modification, including purchasing, testing and installing new equipment, labor costs, reconfiguration of existing equipment, administrative costs, legal and engineering expenses necessary to prepare and file the modification application, and other reasonable documented costs. The initiating party must secure a bond or establish an escrow account to cover reasonable incremental increase in ongoing expenses that will fall upon the modified ITFS entity and to cover expenses that would inure to the modified ITFS entity in the event the initiating party becomes bankrupt. In establishing a bond or escrow amount, such factors as projected electricity or maintenance expenses, or relocation expenses must be taken into account, as relevant in each case.

(e) The involuntarily modified facilities must be operational before the initiating party will be permitted to begin its new or modified operations. The modification must not disrupt the ITFS licensee's provision of service,

and the ITFS licensee has the right to inspect the construction or installation work.

[56 FR 57820, Nov. 14, 1991, as amended at 63 FR 65127, Nov. 25, 1998]

§ 74.990 Use of available instructional television fixed service frequencies by wireless cable entities.

(a) Notwithstanding the provisions §§ 74.931 and 74.932 of this part, a wireless cable entity may be licensed on instructional television fixed service frequencies in areas where at least eight other instructional television fixed service channels remain available in the community for future ITFS use. Channels will be considered available for future ITFS use if there are no co-channel operators or applicants within 80.5 km (50 miles) of the transmitter site of the proposed wireless cable operation, and if the transmitter site remains available for use at reasonable terms by new ITFS applicants on those channels within three years of commencing operation.

(b) No more than eight instructional television fixed service channels per community may be licensed to wireless cable entities.

(c) To be licensed on instructional television fixed service channels, a wireless cable applicant must hold a conditional license, license or a lease, or must have filed an unopposed application for at least four MDS channels to be used in conjunction with the facilities proposed on the ITFS frequencies. An unopposed application is one that faces no competing application(s) or petition(s) to deny. Applicants will be required to confirm their unopposed status after the period for filing competing applications and petitions to deny has passed. If an MDS or MMDS application is opposed, the companion ITFS application will be returned.

(d) To be licensed on instructional television fixed service channels, a wireless cable applicant must show that there are no multipoint distribution service or multichannel multipoint distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. A wireless